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EXAMINER

MIRZA, ADNAN M

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CYNTHIA A. DONOVAN, JIMMY JIANG, SIAMAK S.
AYOUBPOUR, WILFRIED A. KRUSE, MICHAEL D. MCINTYRE,
PURNA C. ROY, and LEON M. TRAISTER

Appeal 2011-003467
Application 09/578,672
Technology Center 2400

Before ROBERT E. NAPPI, KRISTEN L. DROESCH, and JUSTIN
BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a non-final rejection of claims 1-31. We have jurisdiction under 35 U.S.C. § 6(b).

According to Appellants, the invention relates to a “method and apparatus [that] delays users from accessing a service via the world wide web in an orderly manner without maintaining a queue.” Abstract. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of processing a first request for web page, comprising:
 - receiving the first request for the web page; and
 - transmitting, to a device from which the first request was received, at least one command to send a second request for the web page, and a first timestamp.

Rejections

Claims 1-31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sandhu (US 6,985,953 B1; January 10, 2006) and Devine (US 6,606,708 B1; August 12, 2003).

ISSUE

Appellants argue that the cited references do not teach the claimed limitation of “sending to a computer from which a request for a web page was received, a command to send a second request for the web page.” App. Br. 6-7. Appellants further argue that nobody “skilled in the art at the time the invention was made would have sent the timestamp to the client making the request for the web page.” App. Br. 11. Appellants also argue that the “Examiner provides no rationale for the claimed feature.” *Id.* Therefore, the

issue before the Board is: Did the Examiner err in finding that the combination of Sandhu and Devine teaches the limitation of independent claims 1 and 14 directed to transmitting “to a device from which the first request was received, at least one command to send a second request for the web page, and a first timestamp” and the similar limitation of independent claim 27?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ contentions that the Examiner has erred. Further, we have reviewed the Examiner’s response to each of the arguments in the Appeal Brief and Appellants’ arguments in the Reply Brief.

The Examiner found that the relevant portions of the claims were taught by Devine. Appellants argue that the Examiner does not “assert that the Devine reference discloses sending to a computer from which a request for a web page was received, a command to send a second request for the web page as claimed.” App. Br. 6-7. Appellants discuss the relevant portions of the Devine reference and assert that there is no disclosure at all in Devine regarding sending such a command. App. Br. 7. The Examiner found that Devine’s heartbeat transactions and session keys teach the limitation of the claims relating to sending to a device “at least one command to send a second request for the web page.” Ans. 4-5. In the Answer, the Examiner merely repeats the rejection and does not provide any additional explanation of how the heartbeat transactions and/or the session keys teach the claimed limitation. Ans. 8-9.

Based on the arguments and evidence presented, we do not see, nor has the Examiner sufficiently shown, how the heartbeat transactions and the session keys of Devine would have rendered the claimed limitation of transmitting, “to a device from which the first request was received, at least one command to send a second request for the web page” in claims 1 and 14 obvious at the time of the invention. Independent claim 27 includes a similar limitation and thus, the same analysis applies.

CONCLUSION

Based on the analysis above, we conclude that the Examiner erred in rejecting claims 1 through 31 for obviousness under 35 U.S.C. § 103(a).

DECISION

The Examiner’s rejection of claims 1 through 31 under 35 U.S.C. § 103(a) as being obvious over Sandhu and Devine is reversed.

REVERSED

ELD